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27 **UNITED STATES DISTRICT COURT**  
28 **FOR THE EASTERN DISTRICT OF WASHINGTON**

29 THE LANDS COUNCIL, WESTERN  
30 WATERSHEDS PROJECT, and  
31 KETTLE RANGE CONSERVATION  
32 GROUP;

33 *Plaintiffs,*

34 v.

Case No. 2:20-cv-00324-RMP

**ANSWER**

U.S. FOREST SERVICE; GLENN  
CASAMASSA, Pacific Northwest  
Regional Forester, U.S. Forest Service;  
RODNEY SMOLDON, Forest  
Supervisor, Colville National Forest;

*Federal Defendants.*

Federal Defendants hereby respond to the allegations in Plaintiffs' Complaint for Declaratory and Injunctive Relief (Complaint), ECF No. 1, in the above-captioned action. The numbered paragraphs in this Answer correspond to the numbered paragraphs in the Amended Complaint.

**"I. INTRODUCTION"<sup>1</sup>**

1. The allegations in this paragraph constitute Plaintiffs' characterization of this case to which no response is required.

2. Federal Defendants admit the allegations in the first sentence of this paragraph. The remaining allegations in this paragraph are too vague and ambiguous to permit Federal Defendants to frame a response, and are denied on that basis. Additionally, to the extent the photo below this paragraph constitutes additional allegations, Federal Defendants deny those allegations because they lack sufficient knowledge or information to form a belief as to the truth of the allegations.

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<sup>1</sup> The headings here correspond to the headings in the Complaint. Federal Defendants include them strictly to provide convenient reference to the Complaint and do not intend them to form any substantive part of Federal Defendants' Answer. To the extent the Complaint headings make substantive allegations, Federal Defendants deny those allegations.

1           3.       Federal Defendants admit the allegations in the first sentence of this  
2 paragraph. Federal Defendants deny the allegations in the second sentence of this  
3 paragraph. The allegations in the third and fourth sentences of this paragraph  
4 purport to characterize the final environmental impact statement (FEIS) for the  
5 2019 revision of the Colville Forest Plan (2019 Forest Plan), which speaks for  
6 itself and is the best evidence of its content.

7           4.       Federal Defendants deny the allegations in this paragraph.

8           5.       The allegations in the first sentence of this paragraph purport to  
9 characterize the FEIS, which speaks for itself and is the best evidence of its  
10 content. Federal Defendants deny the allegations in the second and third  
11 sentences of this paragraph. Federal Defendants deny the allegations in the  
12 footnote to this paragraph because they lack sufficient knowledge or information  
13 to form a belief as to the truth of the allegations, which purport to characterize an  
14 unidentified “[a]nalysis of data.”

15          6.       The allegations in this paragraph constitute conclusions of law to  
16 which no response is required. To the extent a response is required, Federal  
17 Defendants deny the allegations in this paragraph.

18          7.       The allegations in the first sentence of this paragraph purport to  
19 characterize the 2019 Forest Plan, which speaks for itself and is the best evidence  
20 of its content. The allegations in the second sentence of this paragraph are too  
21 vague and ambiguous to permit Federal Defendants to frame a response, and are  
22 denied on this basis. The allegations in the third sentence of this paragraph  
23 constitute conclusions of law to which no response is required. To the extent a  
24 response is required, Federal Defendants deny the allegations in the third sentence  
25 of this paragraph.

26          8.       Federal Defendants deny the allegations in this paragraph.  
27  
28

1           9.     The allegations in the first sentence of this paragraph constitute  
2 conclusions of law to which no response is required. To the extent a response is  
3 required, Federal Defendants deny the allegations in the first sentence of this  
4 paragraph. The allegations in the second sentence of this paragraph constitute  
5 Plaintiffs' characterization of this case to which no response is required. The  
6 allegations in the third sentence of this paragraph constitute Plaintiffs' requested  
7 relief to which no response is required. To the extent a response is required,  
8 Federal Defendants deny the allegations in this paragraph and deny that Plaintiffs  
9 are entitled to any relief whatsoever.

10                           **“II. JURISDICTION AND VENUE”**

11           10.    The allegations in this paragraph constitute conclusions of law to  
12 which no response is required.

13           11.    The allegations in this paragraph constitute conclusions of law to  
14 which no response is required.

15           12.    The allegations in this paragraph constitute conclusions of law to  
16 which no response is required. To the extent a response is required, Federal  
17 Defendants admit venue is proper in the Eastern District of Washington.

18           13.    The allegations in this paragraph constitute conclusions of law to  
19 which no response is required.

20                           **“III. PARTIES”**

21           14.    Federal Defendants deny the allegations in this paragraph because  
22 they lack sufficient knowledge or information to form a belief as to the truth of  
23 the allegations.

24           15.    Federal Defendants deny the allegations in this paragraph because  
25 they lack sufficient knowledge or information to form a belief as to the truth of  
26 the allegations.

1           16. Federal Defendants deny the allegations in this paragraph because  
2 they lack sufficient knowledge or information to form a belief as to the truth of  
3 the allegations.

4           17. Federal Defendants deny the allegations in the first five sentences of  
5 this paragraph because they lack sufficient knowledge or information to form a  
6 belief as to the truth of the allegations. The allegations in the sixth sentence of  
7 this paragraph constitute conclusions of law to which no response is required. To  
8 the extent a response is required, Federal Defendants deny the allegations in the  
9 sixth sentence of this paragraph.

10           18. Federal Defendants deny the allegations in the first sentence of this  
11 paragraph that “Plaintiffs participated in the comment and objection phases of the  
12 development of the 2019 Plan,” and aver that Plaintiffs Kettle Range  
13 Conservation Group, The Lands Council, and Western Watersheds Project  
14 submitted a joint objection letter following release of the FEIS and draft record of  
15 decision (ROD), but only the Kettle Range Conservation Group and The Lands  
16 Council submitted comments during the various public comment periods under  
17 the National Environmental Policy Act (NEPA). Federal Defendants deny the  
18 remaining allegations in the first sentence as well as the second and third  
19 sentences of this paragraph because they lack sufficient knowledge or information  
20 to form a belief as to the truth of the allegations. The allegations in the fourth  
21 sentence of this paragraph constitute conclusions of law to which no response is  
22 required. To the extent a response is required, Federal Defendants deny the  
23 allegations in the sixth sentence of this paragraph.

24           19. Federal Defendants admit the allegations in the first clause of this  
25 paragraph. The remaining allegations in this paragraph constitute conclusions of  
26 law to which no response is required.  
27  
28

1           20. Federal Defendants admit the allegations in the first sentence of this  
2 paragraph. Federal Defendants admit the allegations in the second sentence of  
3 this paragraph that Glen Casamassa signed the final ROD for the 2019 Forest  
4 Plan. The remaining allegations in the second sentence of this paragraph contain  
5 Plaintiffs' characterization of the case to which no response is required.

6           21. Federal Defendants admit the allegations in the first and second  
7 sentences of this paragraph. The allegations in the third sentence of this paragraph  
8 contain Plaintiffs' characterization of the case to which no response is required.

9           22. The allegations in this paragraph contain Plaintiffs' characterization  
10 of the Complaint to which no response is required.

#### 11                           **“IV. LEGAL BACKGROUND”**

##### 12                   **“A. National Forest Management Act”**

13           23. The allegations in this paragraph constitute conclusions of law to  
14 which no response is required.

15           24. The allegations in this paragraph constitute conclusions of law to  
16 which no response is required.

17           25. The allegations in this paragraph constitute conclusions of law to  
18 which no response is required.

19           26. The allegations in this paragraph constitute conclusions of law to  
20 which no response is required.

21           27. Federal Defendants admit the allegations in the first sentence of this  
22 paragraph as well as the allegations in the first sentence of the footnote at the end  
23 of the first sentence. The allegations in the second sentence of the footnote at the  
24 end of the first sentence of this paragraph contain Plaintiffs' characterization of  
25 the Complaint to which no response is required. Federal Defendants admit the  
26 allegations in the first clause of the second sentence of this paragraph. The  
27 allegations in the second clause of the second sentence of this paragraph  
28

1 constitute conclusions of law to which no response is required. Federal  
2 Defendants admit the allegations in the third sentence of this paragraph. The  
3 allegations in the footnote at the end of the third sentence constitute conclusions  
4 of law to which no response is required.

5 28. The allegations in this paragraph constitute conclusions of law to  
6 which no response is required.

7 29. The allegations in this paragraph constitute conclusions of law to  
8 which no response is required.

9 30. The allegations in this paragraph constitute conclusions of law to  
10 which no response is required.

11 31. The allegations in this paragraph constitute conclusions of law to  
12 which no response is required.

13 32. The allegations in this paragraph constitute conclusions of law to  
14 which no response is required.

15 33. The allegations in this paragraph purport to characterize “U.S. Forest  
16 Service, Rangeland Suitability for Livestock Grazing at the Forest Plan Level and  
17 Standards for NEPA Display (rev. March 2003)”, which speaks for itself and is  
18 the best evidence of its content.

19 34. The allegations in this paragraph constitute conclusions of law to  
20 which no response is required.

21 35. The allegations in this paragraph constitute conclusions of law to  
22 which no response is required. In addition, the allegations in the third sentence of  
23 this paragraph purport to characterize the Forest Service Handbook, which speaks  
24 for itself and is the best evidence of its content.

25 36. The allegations in this paragraph constitute conclusions of law to  
26 which no response is required.

27 **“B. Federal Land Policy and Management Act”**  
28

1           37. The allegations in this paragraph constitute conclusions of law to  
2 which no response is required.

3           38. The allegations in this paragraph constitute conclusions of law to  
4 which no response is required.

5           39. The allegations in this paragraph constitute conclusions of law to  
6 which no response is required.

7           40. The allegations in this paragraph constitute conclusions of law to  
8 which no response is required.

9           41. The allegations in the first sentence of this paragraph purports to  
10 characterize the Forest Service Handbook, which speaks for itself and is the best  
11 evidence of its content. The allegations in the second sentence of this paragraph  
12 constitute conclusions of law to which no response is required. To the extent a  
13 response is required, Federal Defendants deny the allegations in the second  
14 sentence of this paragraph and aver that annual operating instructions are not  
15 required by law or regulation.

16           **“C. National Environmental Policy Act”**

17           42. The allegations in this paragraph constitute conclusions of law to  
18 which no response is required.

19           43. The allegations in this paragraph constitute conclusions of law to  
20 which no response is required.

21           44. The allegations in this paragraph constitute conclusions of law to  
22 which no response is required.

23           45. The allegations in this paragraph constitute conclusions of law to  
24 which no response is required.

25           **“D. Administrative Procedure Act”**

26           46. The allegations in this paragraph constitute conclusions of law to  
27 which no response is required.  
28



1           47. The allegations in this paragraph constitute conclusions of law to  
2 which no response is required.

3           48. The allegations in this paragraph constitute conclusions of law to  
4 which no response is required.

5                           **“V. FACTS”**

6                   **“A. The Colville National Forest”**

7           49. Federal Defendants admit the allegations in this paragraph.

8           50. Federal Defendants admit the allegations in this paragraph.

9           51. The allegations in this paragraph are too vague and ambiguous to  
10 permit Federal Defendants to frame a response, and are denied on that basis.

11           52. The allegations in this paragraph purport to characterize the FEIS,  
12 which speaks for itself and is the best evidence of its content.

13           53. The allegations in the first sentence of this paragraph regarding  
14 “wide variety” are too vague and ambiguous to permit Federal Defendants to  
15 frame a response, and are denied on that basis. Federal Defendants aver that  
16 wildlife and plants inhabit the Colville National Forest including some wildlife  
17 that are listed under the Endangered Species Act (ESA) and some wildlife and  
18 plants that are identified as sensitive species by the Forest Service. Federal  
19 Defendants deny the allegation in the second sentence of this paragraph that the  
20 wolverine is a candidate for listing under the ESA. Federal Defendants admit the  
21 remaining allegations in the second sentence of this paragraph. The allegations in  
22 the third sentence of this paragraph regarding “significant elk herd” are too vague  
23 and ambiguous to permit Federal Defendants to frame a response, and are denied  
24 on that basis. Federal Defendants admit the remaining allegations in the third  
25 sentence of this paragraph. The allegations in the fourth sentence of this  
26 paragraph are too vague and ambiguous to permit Federal Defendants to frame a  
27 response, and are denied on that basis.  
28

1           **“B.   Grazing in the Colville National Forest”**

2           54.   The allegations in the first and second sentences of this paragraph  
3 are too vague and ambiguous to permit Federal Defendants to frame a response,  
4 and are denied on that basis. Federal Defendants admit the allegations in the third  
5 and fourth sentences of this paragraph.

6           55.   The allegations in this paragraph purport to characterize the FEIS,  
7 which speaks for itself and is the best evidence of its content.

8           56.   The allegations in the first clause of the first sentence of this  
9 paragraph purport to characterize the FEIS, which speaks for itself and is the best  
10 evidence of its content. Federal Defendants deny the allegations in the second  
11 clause of the first sentence of this paragraph because they lack sufficient  
12 knowledge or information to form a belief as to the truth of the allegations. The  
13 allegations in the second sentence of this paragraph purports to characterize the  
14 FEIS, which speaks for itself and is the best evidence of its content. Federal  
15 Defendants admit the allegations in the third sentence of this paragraph.

16           57.   The allegations in the first a sentence of this paragraph purport to  
17 characterize the FEIS, which speaks for itself and is the best evidence of its  
18 content. The allegations in the second sentence of this paragraph, including the  
19 footnote, purport to characterize information on a website, which speaks for itself  
20 and is the best evidence of its content. The allegations in the third sentence of  
21 this paragraph purports to characterize “USDA-Forest Service, *National*  
22 *Allotment NEPA Schedule, 2017-2028*,” which speaks for itself and is the best  
23 evidence of its content.

24           58.   The allegations in this paragraph purport to characterize the FEIS,  
25 which speaks for itself and is the best evidence of its content.

26           59.   The allegations in the first sentence of this paragraph purport to  
27 characterize the FEIS, which speaks for itself and is the best evidence of its  
28

1 content. Federal Defendants deny the remaining allegations in this paragraph  
2 because they lack sufficient knowledge or information to form a belief as to the  
3 truth of the allegations, which purport to characterize an unidentified analysis of  
4 data.

5 60. Federal Defendants admit the allegations in the first two clauses of  
6 the first sentence of this paragraph. Federal Defendants deny the allegations in  
7 the third clause of the first sentence of this paragraph because they lack sufficient  
8 knowledge or information to form a belief as to the truth of the allegations, which  
9 purport to characterize an unidentified analysis of data. Federal Defendants admit  
10 the allegations in the second sentence of this paragraph that the operative  
11 allotment management plan for the Silver Creek Grazing allotment is from 1981.  
12 The remaining allegations in the second sentence of this paragraph purport to  
13 characterize the allotment management plan for the Silver Creek Grazing  
14 allotment, which speaks for itself and is the best evidence of its content. Federal  
15 Defendants admit the allegations in the first two clauses of the third sentence of  
16 this paragraph. Federal Defendants deny the allegations in the third clause of the  
17 third sentence of this paragraph because they lack sufficient knowledge or  
18 information to form a belief as to the truth of the allegations, which purport to  
19 characterize an unidentified analysis of data. Federal Defendants admit the  
20 allegations in the fourth sentence of this paragraph. Additionally, to the extent  
21 the maps below this paragraph constitute additional allegations, Federal  
22 Defendants deny those allegations because they lack sufficient knowledge or  
23 information to form a belief as to the truth of the allegations.

24 **“C. Harm to the Forest by Overgrazing”**

25 61. Federal Defendants deny the allegations in this paragraph.  
26 Additionally, to the extent the photos below this paragraph constitute additional  
27 allegations, Federal Defendants deny those allegations because they lack  
28

1 sufficient knowledge or information to form a belief as to the truth of the  
2 allegations.

3 62. Federal Defendants deny the allegations in this paragraph.

4 63. The allegations in this paragraph are too vague and ambiguous to  
5 permit Federal Defendants to frame a response, and are denied on this basis.

6 64. Federal Defendants deny the allegations in the first sentence of this  
7 paragraph. The allegations in the second sentence of this paragraph are too vague  
8 and ambiguous to permit Federal Defendants to frame a response, and are denied  
9 on this basis. Federal Defendants deny the allegations in the third sentence of this  
10 paragraph.

11 65. Federal Defendants deny the allegations in this paragraph.

12 66. The allegations in this paragraph are too vague and ambiguous to  
13 permit Federal Defendants to frame a response, and are denied on this basis.

14 67. The allegations in this paragraph are too vague and ambiguous to  
15 permit Federal Defendants to frame a response, and are denied on this basis.

16 68. The allegations in this paragraph are too vague and ambiguous to  
17 permit Federal Defendants to frame a response, and are denied on this basis.

18 69. Federal Defendants admit the allegations in the first sentence of this  
19 paragraph. Federal Defendants deny the allegations in the second sentence of this  
20 paragraph because they lack sufficient knowledge or information to form a belief  
21 as to the truth of the allegations. Federal Defendants deny the allegations in the  
22 third sentence of this paragraph. Federal Defendants deny the allegations in the  
23 fourth sentence of this paragraph because they lack sufficient knowledge or  
24 information to form a belief as to the truth of the allegations.

25 **“D. The Colville’s Forest Plan Revision”**

26 70. Federal Defendants deny the allegations in the first sentence of this  
27 paragraph. Federal Defendants deny the allegations in the second sentence of this  
28

1 paragraph and aver that the public scoping process for the Forest Plan revision  
2 process that was adopted in 2019 began on June 30, 2011, with the publication of  
3 a notice of intent in the Federal Register. Federal Defendants deny the allegations  
4 in the third sentence of this paragraph. The allegations in the third sentence of  
5 this paragraph purport to characterize the draft environmental impact statement  
6 (DEIS), which speaks for itself and is the best evidence of its content.

7 71. Federal Defendants admit the allegations in this paragraph that  
8 Plaintiff Kettle Range Conservation Group submitted comments on the DEIS and  
9 draft revised Forest Plan. The remaining allegations in this paragraph purport to  
10 characterize those comments, which are the best evidence of their content.

11 72. Federal Defendants admit the allegations in this paragraph.

12 73. Federal Defendants admit the allegations in the first sentence of this  
13 paragraph that Plaintiffs submitted objections under the objection process set  
14 forth at 36 C.F.R. § 219 subpart B. The remaining allegations in this paragraph  
15 purport to characterize those objections, which speak for themselves and are the  
16 best evidence of their content.

17 74. Federal Defendants admit the allegations in the first sentence of this  
18 paragraph and aver that the final ROD and FEIS were signed on October 21,  
19 2019. The allegations in the second sentence of this paragraph constitutes a  
20 conclusion of law to which no response is required. The allegations in the first  
21 clause of third sentence of this paragraph purports to characterize the Forest Plan,  
22 which speaks for itself and is the best evidence of its content. The remaining  
23 allegations in the third sentence of this paragraph are too vague and ambiguous to  
24 permit Federal Defendants to frame a response, and are denied on this basis.

25 75. The allegations in the first sentence of this paragraph purport to  
26 characterize the DEIS and FEIS, which speak for themselves and are the best  
27 evidence of their content. The allegations in the second sentence of this  
28

1 paragraph purport to characterize “Plan documents,” which speak for themselves  
2 and are the best evidence of their content. The allegations in the third sentence of  
3 this paragraph purport to characterize the FEIS, which speaks for itself and is the  
4 best evidence of its content.

5 76. The allegations in this paragraph, including the footnote, purport to  
6 characterize the FEIS, which speaks for itself and is the best evidence of its  
7 content.

8 77. Federal Defendants deny the allegations in this paragraph because  
9 they lack sufficient knowledge or information to form a belief as to the truth of  
10 the allegations, which purport to characterize an unidentified analysis of data.

11 78. Federal Defendants deny the allegations in the first sentence and the  
12 first clause of the second sentence of this paragraph. The remaining allegations in  
13 this paragraph purport to characterize the FEIS, which speaks for itself and is the  
14 best evidence of its content.

15 79. The allegations in the first sentence of this paragraph constitute legal  
16 conclusions to which no response is required. The allegations in the first sentence  
17 of this paragraph also purport to characterize certain regulations and “Final Plan  
18 Documents,” which speak for themselves and are the best evidence of their  
19 content. The allegations in the second sentences of this paragraph purport to  
20 characterize the FEIS, which speaks for itself and is the best evidence of its  
21 content.

22 80. The allegations in this paragraph purport to characterize the FEIS  
23 and 2019 Forest Plan, which speak for themselves and are the best evidence of  
24 their content.

25 81. The allegations in the first sentence of this paragraph purport to  
26 characterize the “Final Plan Documents,” which speak for themselves and are the  
27 best evidence of their content. The allegations in the second sentence of this  
28

1 paragraph purport to characterize the FEIS, which speaks for itself and is the best  
2 evidence of its content.

3 82. The allegations in this paragraph purport to characterize the FEIS,  
4 which speaks for itself and is the best evidence of its content.

5 83. The allegations in this paragraph purport to characterize the FEIS,  
6 which speaks for itself and is the best evidence of its content.

7 84. The allegations in this paragraph purport to characterize the FEIS,  
8 which speaks for itself and is the best evidence of its content.

9 85. The allegations in this paragraph purport to characterize the FEIS,  
10 which speaks for itself and is the best evidence of its content.

11 86. The allegations in this paragraph purport to characterize the FEIS,  
12 which speaks for itself and is the best evidence of its content.

13 87. The allegations in this paragraph purport to characterize the FEIS,  
14 which speaks for itself and is the best evidence of its content.

15 88. The allegations in this paragraph purport to characterize “Final Plan  
16 Documents,” which speak for themselves and are the best evidence of their  
17 content.

18 89. The allegations in this paragraph purport to characterize the FEIS,  
19 which speaks for itself and is the best evidence of its content.

20 90. The allegations in this paragraph purport to characterize the FEIS,  
21 which speaks for itself and is the best evidence of its content.

22 91. The allegations in this paragraph purport to characterize “Final Plan  
23 Documents,” which speak for themselves and are the best evidence of their  
24 content.

25 92. The allegations in this paragraph purport to characterize the 2019  
26 Forest Plan, which speaks for itself and is the best evidence of its content.  
27  
28

1           93. The allegations in the first sentence of this paragraph purport to  
2 characterize the 2019 Forest Plan, which speaks for itself and is the best evidence  
3 of its content. The allegations in the second sentence of this paragraph purport to  
4 characterize the FEIS, which speaks for itself and is the best evidence of its  
5 content.

6           **“E. Implementation of the Revised Forest Plan”**

7           94. The allegations in this paragraph purport to characterize the “Final  
8 Plan Documents,” which speak for themselves and are the best evidence of their  
9 content.

10          95. The allegations in this paragraph purport to characterize the final  
11 ROD, which speaks for itself and is the best evidence of its content.

12          96. The allegations in the first sentence of this paragraph purport to  
13 characterize the draft ROD, which speaks for itself and is the best evidence of its  
14 content. The allegations in the second sentence of this paragraph purport to  
15 characterize the 2018 EIS and DEIS, which speak for themselves and are the best  
16 evidence of their content.

17          97. The allegations in this paragraph purport to characterize the final  
18 ROD, which speaks for itself and is the best evidence of its content.

19          98. The allegations in the first sentence of this paragraph purport to  
20 characterize Appendix B to the 2019 Forest Plan, which speaks for itself and is  
21 the best evidence of its content. The allegations in the second sentence of this  
22 paragraph purports to characterize the “Final Plan Documents,” which speak for  
23 themselves and are the best evidence of their content. The allegations in the third  
24 sentence of this paragraph purports to characterize the National Allotment NEPA  
25 Schedule for 2017 to 2028, which speaks for itself and is the best evidence of its  
26 content.



1           99. The allegations in the first sentence of this paragraph purport to  
2 characterize the FEIS, which speaks for itself and is the best evidence of its  
3 content. Federal Defendants deny the allegations in the second sentence of this  
4 paragraph.

5           100. The allegations in the first clause of the first sentence of this  
6 paragraph purports to characterize the final ROD, which speaks for itself and is  
7 the best evidence of its content. The allegations in the second clause of the first  
8 sentence of this paragraph are too vague and ambiguous to permit Federal  
9 Defendants to frame a response, and are denied on this basis. Federal Defendants  
10 aver that annual operating instructions (AOIs) are not issued to holders of grazing  
11 permits on the Forest. The allegations in the second and third sentences of this  
12 paragraph are too vague and ambiguous to permit Federal Defendants to frame a  
13 response, and are denied on this basis. Federal Defendants aver that pre-season  
14 meetings were held with holders of grazing permits on the Forest between April  
15 and June 2020. The allegations in the fourth sentence of this paragraph constitute  
16 conclusions of law to which no response is required. To the extent a response is  
17 required, Federal Defendants deny the allegations in the fourth sentence of this  
18 paragraph.

19           101. The allegations in the first and second sentences of this paragraph  
20 are too vague and ambiguous to permit Federal Defendants to frame a response,  
21 and are denied on this basis. Federal Defendants admit the allegations in the third  
22 sentence of this paragraph that “no changes were made to implement any of the  
23 standards and guidelines contained in the 2019 Plan,” and aver that, consistent  
24 with the National Forest Management Act and final ROD, grazing on the Forest  
25 continues to be managed through permits issued under the 1988 Forest Plan,  
26 which was in effect at the time the permits were issued. Federal Defendants deny  
27 the remaining allegations in the third sentence of this paragraph.  
28

**“I. [sic] CLAIMS”**

**“First Claim – The Forest Service Failed to Adjust Grazing Strategy in the 2019 Plan in Accordance with Its Capability and Suitability Analysis, in violation of NFMA”**

102. Federal Defendants restate and incorporate by reference their response to all preceding paragraphs.

103. The allegations in this paragraph constitute conclusions of law to which no response is required.

104. The allegations in this paragraph constitute conclusions of law to which no response is required.

105. The allegations in this paragraph constitute conclusions of law to which no response is required.

106. The allegations in the first, second, and fourth sentences of this paragraph purport to characterize the “Final Plan Documents,” which speak for themselves and are the best evidence of their content. The allegations in the third sentence of this paragraph purports to characterize the 2019 Forest Plan, which speaks for itself and is the best evidence of its content.

107. The allegations in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, Federal Defendants deny the allegations in this paragraph.

108. The allegations in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, Federal Defendants deny the allegations in this paragraph.

**“Second Claim – The Forest Service Failed to Consider Necessary Factors in Determining the Capability and Suitability of Land for Grazing, in violation of NFMA”**

1           109. Federal Defendants restate and incorporate by reference their  
2 response to all preceding paragraphs.

3           110. The allegations in this paragraph constitute conclusions of law to  
4 which no response is required.

5           111. The allegations in this paragraph purport to characterize the FEIS,  
6 which speaks for itself and is the best evidence of its content.

7           112. The allegations in this paragraph purport to characterize the FEIS,  
8 which speaks for itself and is the best evidence of its content.

9           113. The allegations in the first sentence of this paragraph constitute  
10 conclusions of law to which no response is required. Federal Defendants deny  
11 the allegations in the second and third sentences of this paragraph.

12           114. The allegations in the first sentence of this paragraph constitute  
13 conclusions of law to which no response is required. Federal Defendants deny  
14 the allegations in the second sentence of this paragraph.

15           115. The allegations in the first sentence of this paragraph constitute  
16 conclusions of law to which no response is required. Federal Defendants deny  
17 the allegations in the second sentence of this paragraph. The allegations in the  
18 third sentence of this paragraph are too vague and ambiguous to permit Federal  
19 Defendants to frame a response, and are denied on that basis.

20           116. Federal Defendants deny the allegations in the first sentence of this  
21 paragraph. The allegations in the second sentence of this paragraph constitute  
22 conclusions of law to which no response is required. To the extent a response is  
23 required, Federal Defendants deny the allegations in the second sentence of this  
24 paragraph.

25           117. The allegations in this paragraph constitute conclusions of law to  
26 which no response is required. To the extent a response is required, Federal  
27 Defendants deny the allegations in this paragraph.  
28

1           **“Third Claim – The Forest Service Failed to Adequately Identify**  
2           **Suitable and Capable Grazing Land, in Violation of NFMA and NEPA”**

3           118. Federal Defendants restate and incorporate by reference their  
4 response to all preceding paragraphs.

5           119. The allegations in this paragraph constitute conclusions of law to  
6 which no response is required.

7           120. The allegations in this paragraph constitute conclusions of law to  
8 which no response is required.

9           121. The allegations in this paragraph constitute conclusions of law to  
10 which no response is required.

11           122. The allegations in this paragraph purport to characterize the FEIS,  
12 which speaks for itself and is the best evidence of its content.

13           123. The allegations in this paragraph constitute conclusions of law to  
14 which no response is required. To the extent a response is required, Federal  
15 Defendants deny the allegations in this paragraph.

16           124. The allegations in this paragraph constitute conclusions of law to  
17 which no response is required. To the extent a response is required, Federal  
18 Defendants deny the allegations in this paragraph.

19           **“Fourth Claim – The Forest Service Failed to Consider a Range of**  
20           **Grazing Alternatives, in Violation of NFMA and NEPA”**

21           125. Federal Defendants restate and incorporate by reference their  
22 response to all preceding paragraphs.

23           126. The allegations in this paragraph constitute conclusions of law to  
24 which no response is required.

25           127. The allegations in this paragraph constitute conclusions of law to  
26 which no response is required.

1           128. The allegations in this paragraph constitute conclusions of law to  
2 which no response is required. To the extent a response is required, Federal  
3 Defendants deny the allegations in this paragraph.

4           129. The allegations in this paragraph constitute conclusions of law to  
5 which no response is required. To the extent a response is required, Federal  
6 Defendants deny the allegations in this paragraph.

7           **“Fifth Claim – The Forest Service Failed to take the Required ‘Hard**  
8 **Look’ at the Ecological Effects of Overgrazing, in Violation of NEPA”**

9           130. Federal Defendants restate and incorporate by reference their  
10 response to all preceding paragraphs.

11           131. The allegations in this paragraph constitute conclusions of law to  
12 which no response is required.

13           132. The allegations in this paragraph constitute conclusions of law to  
14 which no response is required.

15           133. The allegations in this paragraph constitute conclusions of law to  
16 which no response is required.

17           134. The allegations in this paragraph constitute conclusions of law to  
18 which no response is required. To the extent a response is required, Federal  
19 Defendants deny the allegations in this paragraph.

20           135. The allegations in this paragraph constitute conclusions of law to  
21 which no response is required. To the extent a response is required, Federal  
22 Defendants deny the allegations in this paragraph.

23           **“Sixth Claim – The Forest Service Failed to Revise Allotment-Level**  
24 **Grazing Authorizations to Limit, Condition, or Prohibit Grazing on Land not**  
25 **Capable and Suitable for Grazing, in Violation of NFMA”**

26           136. Federal Defendants restate and incorporate by reference their  
27 response to all preceding paragraphs.  
28

1           137. The allegations in this paragraph constitute conclusions of law to  
2 which no response is required.

3           138. The allegations in this paragraph constitute conclusions of law to  
4 which no response is required. To the extent a response is required, Federal  
5 Defendants deny the allegations in this paragraph.

6           139. The allegations in this paragraph constitute conclusions of law to  
7 which no response is required. To the extent a response is required, Federal  
8 Defendants deny the allegations in this paragraph.

9           140. The allegations in this paragraph constitute conclusions of law to  
10 which no response is required. To the extent a response is required, Federal  
11 Defendants deny the allegations in this paragraph.

## 12                           **“VI. REQUEST FOR RELIEF”**

13           The remaining paragraphs of Plaintiffs’ Complaint, denominated A-H  
14 constitute Plaintiffs’ request for relief to which no response is required. To the  
15 extent a further response may be required, Federal Defendants deny that Plaintiffs  
16 are entitled to the relief requested or any relief whatsoever.

## 17                           **GENERAL DENIAL**

18           Federal Defendants deny each and every allegation of the Complaint not  
19 otherwise expressly admitted, qualified, or denied herein. In addition, Federal  
20 Defendants hereby expressly reserve the right to plead any affirmative defenses,  
21 jurisdictional or justiciability bars to Plaintiffs’ claims, or any applicable state or  
22 federal statutes that it may determine apply to this case as litigation of such claims  
23 proceeds.

## 24                           **AFFIRMATIVE DEFENSES**

25           1. Plaintiffs have waived some or all of their claims by not raising them  
26 during the administrative process.

1           2.     Federal Defendants reserve the right to assert additional affirmative  
2 defenses during the course of this litigation.  
3

4           WHEREFORE, Federal Defendants request that the Court dismiss the  
5 Complaint in its entirety, render judgment for Federal Defendants and against  
6 Plaintiffs, and grant Federal Defendants any further relief that the nature of the  
7 case and justice require.  
8

9           Respectfully submitted this 16th day of November, 2020.  
10

11                                 /s/ Shaun M. Pettigrew

12                                 SHAUN M. PETTIGREW

13                                 Trial Attorney

14                                 Natural Resources Section

15                                 c/o NOAA, Damage Assessment

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21                                 EMMA L. HAMILTON

22                                 Trial Attorney

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24                                 P.O. Box 7611

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27                                 emma.hamilton@usdoj.gov  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system.

/s/ Shaun M. Pettigrew  
SHAUN M. PETTIGREW  
U.S. Department of Justice